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Date of Signature

**PATENT**

**IN THE UNITED STATES PATENT AND  
TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT  
APPEALS AND INTERFERENCES**

Appellant: Coccato et al.  
Serial No.: 09/955,894  
Filed: September 19, 2001  
For: METHOD FOR PURCHASING CONSUMER PRODUCTS

Group: 3653  
Examiner: J. Shapiro  
Edgewater, New Jersey 07020  
August 2, 2004

**BRIEF FOR APPELLANTS**

Commissioner for Patents  
Alexandria, VA 22313-1450

Sir:

Enclosed herewith are three (3) copies of an Appeal Brief for Appellant.

Please charge the \$330.00 fee to our Deposit Account No. 12-1155. Any deficiency or overpayment should be charged or credited to this Deposit Account. This authorization is submitted in triplicate.

Respectfully submitted,

Edward A. Squillante, Jr.  
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Date of Signature

Edward A. Squillante, Jr.  
Reg. No. 38,319  
Attorney for Appellant(s)

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**TABLE OF CONTENTS**

I.	Real Party In Interest.....	4
II.	Related Appeals.....	4
III.	Status of Claims.....	4
IV.	Status of Amendments .....	5
V.	Summary of the Invention .....	5-6
VI.	Issues as Framed by the Final Rejection .....	6

VII. Grouping of Claims .....	7
VIII. Appellant's Arguments.....	7-10
IX. Conclusion.....	11
X. Appendix.....	12

### **I. REAL PARTY IN INTEREST**

The Real Party in Interest in this Appeal is Unilever Home & Personal Care USA, a Division of Conopco, Inc., a corporation of the State of New York.

### **II. RELATED APPEALS AND INTERFERENCES**

Neither the Appellants, their legal representatives nor the Assignee are aware of any other Appeals or Interferences relating to the present Appeal.

### **III. STATUS OF CLAIMS**

This Appeal is taken from the Final Rejection of claims 1-13, the pending claims in the application. A copy of the appealed claims is attached to this Brief as an Appendix.

#### **IV. STATUS OF AMENDMENTS**

No amendment was made to the claims after the final rejection was issued by the Examiner.

#### **V. SUMMARY OF THE INVENTION**

The invention set forth in the claims on appeal is directed to a method for purchasing a consumer product in a refillable package at a point of purchase establishment. The method generates less environmental waste, and allows the consumer to easily purchase consumer products at reduced costs.

By the presently claimed invention, therefore, a superior method for purchasing a consumer product in a refillable package is described. As may be readily gleaned from, for example, pages 7-8 in the specification, the claimed method depicts an efficient and environmentally friendly way to purchase consumer products, and especially, consumer products that are heavy in nature.

In the Specification, the portion from page 1 to page 2 is background. The phraseology used in claim 1 may be found, for example, on page 3 of the

specification as originally filed. Beginning at page 7, the invention claimed is illustrated.

#### **VI. ISSUES AS FRAMED BY THE FINAL REJECTION**

The issue raised in this appeal is primarily one of fact and of the type normally encountered in connection with a rejection made under 35 USC § 103. In particular, the issue is as follows:

Would one of ordinary skill in the art, upon reading Brown in view of Littlejohn find it obvious to purchase a consumer product via a method that instructs a consumer to have the package of the consumer product refilled?

Moreover, would one of ordinary skill in the art upon reading Brown, in view of Littlejohn and further in view of Duvall find it obvious to fill a package for a consumer product a limited number of times as applied to the independent claim?

## **VII. GROUPING OF CLAIMS**

Appellants submit that claims 1-13 stand and fall together.

## **VIII. APPELLANTS' ARGUMENTS**

### **I. Rejection Under 35 USC §103**

The Examiner has rejected claims 1-6 and 8-13 under 35 USC §103 as being unpatentable over Brown, U.S. Patent No. 6,578,763 (hereinafter '763) in view of Littlejohn, U.S. Patent No. 6,553,353 (hereinafter '353). In the rejection, the Examiner mentions, in summary, that the '763 reference discloses the information described in claims 1-6 and 8-13. The Examiner further mentions that the '763 reference discloses Appellant's formula for prepaying. The Examiner still further mentions that the '763 reference describes that the original purchase price for the refillable container is discounted when refilled since no further pricing is required for the container. The Examiner believes this is true because the '763 reference mentions that the consumer will be given a discount coupon at the time of refilling. Furthermore, the Examiner believes that the '353 reference discloses prepaying. In view of the above, the Examiner believes that the 35 USC §103 rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Appellants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As made of record, independent claim 1, is directed to a method of purchasing a consumer product comprising the steps of (a) selling a consumer product in a package to a consumer at a point of purchase establishment, and (b) instructing the consumer to retain the package after the consumer product has been consumed and (c) providing a means for the consumer to have the package refilled with consumer product wherein the product is sold at a sale price that includes a predetermined number of refills.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the type of consumer product that can be purchased, the type of establishment that can sell the consumer product, packaging types, the characteristics of the packaging, the characteristics of the consumer product, and a specific mathematical formula that satisfies the method of purchasing such that a consumer saves money while simultaneously protecting the environment.

In contrast, the '763 reference merely discloses a refillable bottle that is refilled in a machine with readable indicia on a container whereby the machine dispenses a discount coupon so that the consumer can use the coupon to pay the vendor at each and every refilling. The present invention, as now defined in the independent claim as previously amended, is directed to a method whereby the consumer only has to pay the vendor a single time and the single sale price includes a predetermined number of refills. Thus, the present invention is significantly more efficient and consumer friendly than the process

described in the '763 reference which merely shows a method for vending a specific liquid consumer product whereby the consumer has to pay a vendor at every refill. Furthermore, there is nothing in the '763 reference that suggests a product being sold can be in form other than a liquid.

In an attempt to cure the vast efficiencies of the '763 reference, the Examiner relies on Littlejohn which discloses a non-analogous system directed to the regulating and billing of utilities by a customer. Clearly, the combination of references relied on by the Examiner does not teach the method set forth in claim 1, as presented. Particularly, claim 1 in combination with claim 11 specifically claims a method where one payment is made, a predetermined amount of refills can be made, and a customer pays less money by using a refillable package wherein the customer only has to pay the vendor a single time. In view of this, it is clear that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. Thus, the obvious rejection should be withdrawn and rendered moot.

## II. Rejection Under 35 USC §103

The Examiner has rejected claim 7 under 35 USC §103 as being unpatentable over Brown (hereinafter '763) in view of Littlejohn (hereinafter '353) and further in view of Duvall, U.S. Patent No. 5,522,428 (hereinafter '428). In the rejection, the Examiner mentions, in summary, that the '428 reference describes the limitations of claim 7 in that the predetermined number of times to refill will be less than the number of times that causes stress fractures in the package. In view of the above, the Examiner believes that the 35 USC §103 rejection to claim 7 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Appellants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As made of record, the present invention is directed to a method for purchasing a consumer product wherein the product is sold at a sale price that includes a predetermined number of refills. Independent claim 1 is further defined by claim 7 wherein the consumer product which is sold in a package is sold in a manner such that the package is suitable to be refilled a predetermined number of times and the predetermined number of times is less than the number of times that would cause stress fractures in the package. The '763 reference teaches a method for refilling a container wherein the consumer must take a coupon dispensed from a refill machine and pay a vendor at each refill. The '353 reference is merely directed to an advanced metering system that enables regulation and billing of utilities by a third party interrogate. The '428 reference is merely directed to a natural gas vehicle tank life sensor and control. The combination of references relied on by the Examiner does not, even remotely, teach, suggest, or disclose the invention set forth in the presently claimed invention. This invention is one where a consumer can make a single payment and have a container refilled a predetermined number of times, ensuring that the container will not break or stress fracture during the using and refilling period.

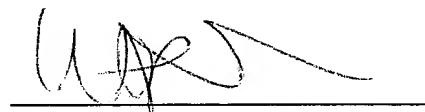
In view of the above, Appellants respectfully request that the rejection made under 35 USC §103 be withdrawn and rendered moot.

Appellants hereby submit that all claims of record are in condition for allowance.

## IX. CONCLUSION

Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's final rejection of claims 1-13 under 35 U.S.C. 103.

Respectfully submitted,



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## X. APPENDIX

1. A method for purchasing a consumer product comprising the steps of:
  - (a) selling a consumer product in a package to a consumer at a point of purchase establishment;
  - (b) instructing the consumer to retain the package after the consumer product has been consumed; and
  - (c) providing a means for the consumer to have the package refilled with consumer productwherein the product is sold at a sale price that includes a predetermined number refills.
2. The method for purchasing a consumer product according to claim 1 wherein the consumer product is a cereal, shampoo, hair conditioner, beverage, cream or ointment, laundry detergent or fabric softener.
3. The method for purchasing a consumer product according to claim 1 wherein the consumer product is a laundry detergent or fabric softener.
4. The method for purchasing a consumer product according to claim 1 wherein the point of purchase establishment is a mini-mart, department store, club-store or supermarket.
5. The method for purchasing a consumer product according to claim 1 wherein the package is a bottle, bag, sachet or box.

6. The method for purchasing a consumer product according to claim 1 wherein the package is a bottle for carrying a laundry detergent or fabric softener.
7. The method for purchasing a consumer product according to claim 1 wherein the package is suitable to be refilled a predetermined number of times, the predetermined number of times being less than a number of times that causes stress fractures in the package.
8. The method for purchasing a consumer product according to claim 1 wherein product is a flake, granule, tablet, powder, paste, slurry or liquid.
9. The method for purchasing a consumer product according to claim 1 wherein the product is a liquid detergent or liquid fabric softener.
10. The method for purchasing a consumer product according to claim 1 wherein the package has an information device and is refilled by being placed in association with a refilling device having an information detector for reading information about the product off of the information device.
11. The method for purchasing a consumer product according to claim 1 wherein the method satisfies the formula  $P_o < P_t + (P_r)N'$

where  $P_o = P_t + (P_r)N$

$P_o$  = original purchase price of a consumer product;

$P_t$  = typical purchase price of a consumer product;

$P_r$  = refill price;

N = a defined number of refills;

N' = a defined number of purchases; and

N = N'

and further wherein less environmental waste is generated and the consumer pays less money for the consumer product.

12. The method for purchasing a consumer product according to claim 1 wherein the product is a laundry detergent concentrate.

13. The method for purchasing a consumer product according to claim 1 wherein the product is a fabric softener concentrate.